

PATENT APP. NO. 10/668,599

ATTY. DOCKET NO. 53394.000718

AMENDMENT IN RESPONSE TO APRIL 4, 2005 OFFICE ACTION

III. REMARKS/ARGUMENTS

A. Status of the Claims

Claims 1-38 and 53-66 are pending in the application. Claims 1-27 and 31-66 stand rejected by the Examiner. Claims 28-30 stand object to by the Examiner. By this amendment, claims 28, 53, 58-61 and 61 are amended, and claims 29-52 are cancelled, without prejudice. No new matter is added. Applicants respectfully request reconsideration of the rejections of claims 1-27, 31-38, and 53-66 for at least the following reasons.

B. Claim Objections

Applicants would like to thank the Examiner for the indication that claims 28-30 would be allowable if rewritten in independent form. Accordingly, Applicants have rewritten claim 28 in independent form. Therefore, Applicants respectfully request that these claims pass to allowance.

C. Claim Rejections under 35 U.S.C. § 102(b)

1. Claims 1-3, 12, 14-15, 23, 25-26, 31-32, 36, 38, 53-55, 64 and 66

Claims 1-3, 12, 14-15, 23, 25-26, 31-32, 36, 38, 53-55, 64 and 66¹ stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,197,958 to Howell ("Howell"). With regard to independent claim 1, the Office Action asserts that Howell discloses

an absorbent article comprising a longitudinal end; a waist portion positioned adjacent the longitudinal end; and a crotch portion adjacent the waist portion (figure 1), wherein the absorbent article includes at least one unregistered character graphic positioned in the waist portion, and at least one wetness indicator graphic positioned in the crotch portion, and wherein the wetness indicator graphic and the character graphic are related to one another, but not interactively interrelated as set forth in figure 1.

¹ Claims 39-52 have been cancelled, without prejudice. Accordingly, the rejection of these claims will not be addressed in this Response.

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Office Action, page 3. Applicants respectfully disagree.

In order for a claim to be anticipated by a reference, that reference must disclose each and every element of the claimed invention. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."); *See also Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) ("The identical invention must be shown in as complete detail as is contained in the . . . claim."). Howell does not disclose at least one unregistered character graphic positioned in the waist portion, at least one wetness indicator graphic positioned in the crotch portion, and wherein the wetness indicator graphic and the character graphic are related to one another, but not interactively interrelated as recited in claim 1. Instead, Howell discloses that:

outer shell 5 of the diaper is screened using conventional silk screening techniques to screen a repeating pattern, such as several small cartoon figures, covering substantially the entire outer surface of the *diaper using the thermally sensitive ink. The thermally sensitive ink is designed to change color when the heat from the wet and soiled diaper reaches the outer shell of the diaper. Therefore, the color of the thermally sensitive pattern, i.e. the cartoon figures, will change when the diaper becomes wet.*

Howell, Col. 5, l. 63 - Col. 6, l. 4 (emphasis added). Thus, all of the graphics on the outer surface of the diaper are wetness indicator graphics, and will change when the diaper becomes wet. Howell fails to disclose the claimed unregistered character graphic that *does not change* when the diaper becomes wet. Therefore, Applicants respectfully request that the rejection of claim 1, and all claims dependent thereon, be withdrawn.

Independent claims 15, 26 and 53, as well as their dependent claims, all recite similar limitations. Accordingly, Applicants respectfully request that these rejections be withdrawn.

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2. Claims 53-58 and 64-66

Claims 53-58 and 64-66² stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 6,307,119 to Cammarota *et al.* ("Cammarota"). With regard to independent claim 39, the Office Action asserts that Cammarota discloses:

an absorbent article comprising: a longitudinal end; a waist portion positioned adjacent the longitudinal end; a crotch portion adjacent the waist portion (figure 2); at least one character graphic (81) positioned in the waist portion; and at least one wetness indicator graphic (85) positioned in the crotch portion, wherein the wetness indicator graphic and character graphic are related to one another

Office Action, Page 5. Applicants respectfully disagree.

As discussed above, a claim is anticipated by a reference only if "each and every element as set forth in the claim is found, either expressly or inherently described" in the reference. *Verdegaal Bros.*, 814 F.2d at 631. As amended, independent claims 39 and 53 require "at least one unregistered character graphic" and "at least one unregistered anthropomorphic object graphic," respectively. Cammarota fails to disclose an unregistered graphic. Therefore, because Cammarota fails to disclose all elements of independent claim 53, as well as the claims dependent thereon, Applicants respectfully request that these rejections be withdrawn.

D. Claim Rejections under 35 U.S.C. § 103

Claims 4-11, 13, 16-22, 24, 27, 33-35, 37, 45-49 and 56-63 stand rejected under 35 U.S.C. § 103(a) as allegedly rendered obvious by Howell in view of Cammarota. Specifically, with regard to claim 4, the Office Action admits that Howell does not disclose that "the at least one wetness indicator graphic is positioned on an absorbent core facing surface of the back sheet." Office Action at 7. Nevertheless, the Office Action refers to Cammarota, which allegedly discloses "a wetness indicator graphic being positioned on an absorbent core facing surface of the backsheet" *Id.*

² Claims 39-52 have been cancelled, without prejudice. Accordingly, the rejection of these claims will not be addressed in this Response.

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Therefore, the Office Action contends that "[i]t would have been obvious to one of ordinary skill in the art to provide a wetness indicator graphic on an absorbent core facing surface of the backsheet because this location is particularly desirable for wetness indicator graphics in order to enhance the speed at which the graphic is contacted by urine and thus change their visual appearance as taught by Cammarota" *Id.*

Applicants respectfully disagree, because the Office Action has failed to establish a *prima facie* case of obviousness.

In order to establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some motivation or suggestion to make the proposed combination or modification of the references. Further, "the teaching or suggestion to make the claimed combination must be found in the prior art, and not based on the applicant's disclosure." MPEP 2142, discussing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In addition, the combined, or modified, references must teach or suggest all claim limitations.

As discussed above, Howell fails to disclose all elements of independent claims 1, 15, 26, 53 (as amended) and their dependent claims. Cammarota does not cure these deficiencies. Specifically, Cammarota does not disclose "at least one *unregistered* character graphic" as recited in independent claim 1, and similarly recited in independent claims 15, 26, 39 (as amended) and 53 (as amended). Therefore, because the Office Action has failed to establish a *prima facie* case of obviousness, Applicants respectfully request that this rejection be withdrawn.

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IV. CONCLUSION

Applicants respectfully submit that the application is in condition for allowance. Applicants believe that no fees are necessary in connection with the filing of this document. In the event any fees are necessary, please charge such fees, including fees for any extensions of time, to the undersigned's Deposit Account No. 50-0206. Should any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,
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Dated: July 5, 2005

By:


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